

# **JSC INTERVIEW ROUND: OCTOBER 2024**

## **VACANCY: JUDGE SUPREME COURT OF APPEAL**

### **JUDGE LEONIE WINDELL**

#### **1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments**

1.1. The candidate holds the following qualifications and experience:

1.1.1. B Iuris, North-West University, obtained 1989

1.1.2. LLB, Unisa, obtained 1994.

1.2. The candidate holds the following professional admissions and honours:

1.2.1. Prosecutor, 9 January 1989 to 31 October 1993.

1.3. The candidate was appointed to the following judicial roles:

1.3.1. Magistrate, 1 November 1993 – 30 June 2013

1.3.2. Judge, 1 July 2013 to date

1.3.3. Acting Judge of the Supreme Court of Appeal – 1 June to 30 November 2022 (two terms) and 1 June to 30 September 2023 (one term).

#### **2. The candidate's integrity and ethics**

2.1. No circumstances are known that would suggest that the candidate is not a person of integrity, with a reputation for ethical behaviour, or is not a fit and proper person for appointment.

#### **3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench**

3.1. There are currently 23 permanent judges on the Supreme Court of Appeal bench, comprising:

3.1.1. 10 black women (8 African, 1 Coloured, 1 Indian)

3.1.2. 7 black men (4 African, 2 Coloured, 1 Indian)

3.1.3. 3 white women, and

3.1.4. 3 white men.

3.2. According to the questionnaire, the candidate is a white woman.

**4. The maximum time period the candidate could serve if appointed**

4.1. At the time of the interviews, the candidate will be approximately 57 years old and will have completed a period of approximately 11 years and 3 months of active service.

4.2. If appointed, the candidate would be eligible to complete a period of approximately 12 years and 11 months active service as a judge of the Supreme Court of Appeal.

**5. The candidate's personal commitment to the values of the Constitution**

5.1. The candidate is involved in training through the SAJEI and has trained newly appointed judges and aspirant judges on many occasions. The candidate has presented the following topics: conducting a criminal trial; appeals and reviews; unopposed motion court; eviction and foreclosures.

5.2. The candidate was a trainer in the 2023 Woman Aspirant Judges course under the auspices of Deputy Judge President Mojapelo.

5.3. During her career, the candidate mentored several final-year law students who were provided with the opportunity to spend time in her chambers and observe court proceedings.

5.4. The candidate assisted in the JUTA moot court competition at the North-West University in 2014, 2015, 2017 and 2019.

5.5. The candidate was involved as a facilitator at the Law, Race and Gender Research Unit, University of Cape Town and attended their first National Conference in May 1998.

5.6. The candidate trained and was selected as a facilitator in "social context" workshops for Magistrates across several provinces annually or bi-annually from 199 to 2003.

5.7. The candidate lectured on civil procedure in the Magistrates' Court for final-year law students at the Law School (LEAD) at the North-West University from 2006 to 2008 and again in 2013.

5.8. The candidate has been a member of the International Association of Women Judges (IAWJ) South African Chapter since 2009.

5.8.1. The candidate was the Provincial Co-ordinator for the IAWJ North-West Province (2010-2013) and Gauteng Province (2015-2018).

5.8.2. The candidate was the Assistant Vice President for Publications (2017-2018).

**6. The candidate's knowledge of the law, including constitutional law**

6.1. The candidate appears to have a good knowledge of the law, including constitutional law, and in both civil and criminal respects.

6.2. The candidate's judgments reflect a sound understanding of legal principles.

**7. Judgments of the candidate that have been overturned, upheld, or commented on, on appeal**

7.1. *Deez Realtors v SA Securitisation Program (175/2016) [2016] ZASCA 194 (2 December 2016)*. The matter dealt with a debt arising from a breach of non-payment of monies as and when it fell due of two lease agreements. The plaintiffs alleged that they were entitled to immediate payment of all amounts that would have been payable in terms of the agreements until the expiry of the rental period regardless of whether such amounts were then due for payment (i.e. accelerated payments). The defendants pleaded that the plaintiffs had elected to cancel the lease agreements. The plaintiffs then sought to amend their pleadings to allege the cancellation, but still claim the balance outstanding as damages. The defendants objected as such an amendment would introduce a new debt which had prescribed. The SCA held that the nature of the debt claimed remained the same and "*for substantially the same reasons the court a quo gave*" dismissed the appeal.

7.2. *Meechan v Naude and Another (A5003/2019) [2020] ZAGP JHC 272*. The candidate was criticised by the appellant that for allegedly not first assessing the credibility of witnesses, thereafter their reliability, and only then proceeding to probabilities of evidence. The full court stated at paragraph 34 that, although the judgment did not refer to credibility or reliability, the candidate, without specifically stating it, expressly found the appellant not to be credible. At paragraph 37 of the judgment the full court also said the following: "*The findings of the court a quo without expressly stating so clearly found evidence of the appellant's incredulous whereas the evidence of Naude is credible. The court therefore finds no rational basis to interfere with the decision of the court a quo*".

7.3. *Imbuko Wines (Pty) Ltd v Reference Audio CC* (405/2021) [2022] ZASCA 110 (15 July 2022). The matter pertained to whether an oral cession was established. The trial court held that it did. The majority judgment, in which the candidate concurred, held that the evidence did not sufficiently establish a cession, but at best, a tripartite arrangement. In this regard, the majority found that the failure to call Dr Singh to confirm the cession was fatal to Imbuko’s case. It also found that the cession (if established) was not brought to the knowledge of reference audio. The SCA overturned the full court’s decision and said the following at paragraph 8 of its judgment:

*“The decision by the majority of the full court to non-suit Imbuko because Dr Singh was not called to confirm the cession on behalf of Dipole, cannot be supported, especially given that the threshold to establish cession is not stringent.”*

7.4. *Moraitis Inv (Pty) Ltd v Montic Dairy (Pty) Ltd* 2017 (5) SA 508 (SCA). This matter turned on whether a signatory to a settlement agreement made an order of court had the necessary authority to conclude the agreement on behalf of both a trust and company.

The candidate presided over the matter in the first instance, but her judgment was not located by the reviewers. It appears from the appeal judgment of the full court in *Montic Dairy (Pty) Ltd and Others v Moraitis Investments (Pty) Ltd and Others* (A5084/2014) [2016] ZAGPJHC 195 (12 May 2016) that the candidate held that the signatory lacked authority in respect of both the trust and the company.

The majority of the full court held that the signatory had the necessary authority, set aside the candidate’s order, and dismissed the application. The SCA unanimously dismissed the appeal against the order of the full court, holding that the trust and the company had failed to discharge the onus of proving that the signatory lacked authority.

Neither appeal judgment contains adverse comments on the judgment *a quo*.

7.5. *Fluxmans Inc v Levenson* 2017 (2) SA 520 (SCA). The matter concerned the question of the prescription of a claim for money paid pursuant to an agreement that was invalid due to non-compliance with the Contingency Fees Act. Although the minority judgment would not have upheld the appeal, both the minority and majority expressed

some criticism of the candidate's judgment *a quo* in paragraph 10 and 32 of the judgment.

7.6. In *Democratic Alliance v Minister of Co-operative Governance and Traditional Affairs* (700/2022) [2024] ZASCA 65; [2024] 3 All SA 1 (SCA) (30 April 2024) the majority (4 vs 1) upheld the judgment of the majority of the full court *a quo* which consisted of Musi JP with whom the candidate concurred. The minority of the SCA (Makgoka JA) stated that the court *a quo* "mischaracterized" the core arguments in respect of the concept of a 'state of emergency' and 'state of disaster', and it was this mischaracterization that had a direct outcome in the order.

7.7. Save to the extent of the comments outlined above, no further affirmative, adverse or negative comments have been made on the candidate's judgments in the above decisions.

## **8. The extent and breadth of the candidate's professional experience**

8.1. The candidate has vast professional experience as a prosecutor (4 years, 9 months), then as a Magistrate (19 years, 8 months), an acting judge (6 months), a judge (10 years, 10 months) and an acting judge of appeal (three terms).

8.2. The candidate sits as a judicial officer in civil, criminal, tax, family, insolvency, and equality court matters, demonstrating a wide range of experience very well suited for the position for which she is being considered.

## **9. The candidate's linguistic and communication skills**

9.1. The candidate's linguistic skills are very good. Her judgments are well structured and reasoned.

## **10. The candidate's ability to produce judgments promptly**

10.1. The applicant generally produces judgments with diligence. Since her previous questionnaire for judges, which was completed by the candidate on 20 March 2024, her reserved judgments increased from five to nine (although judgment in all five reserved matters as at 20 March 2024 were delivered and do thus not form part of the nine referred to).

10.2. According to the candidate, as at 14 June 2024 she had nine outstanding judgments, reserved on 21 March 2024, 30 April 2024, (two judgments), 2 May 2024, 13 May 2024 (two judgments), 23 May 2024, and 12 June 2024 (two judgments).

10.3. The reviewers did not establish whether any judgments have been delayed for more than three months.

**11. The candidate's ability to conduct court proceedings fairly, efficiently, and effectively**

11.1. The reviewers received no adverse comments from colleagues relating to the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.

11.2. Comments received indicated that the candidate has a good judicial temperament and is well regarded.

**12. The candidate's independent-mindedness**

12.1. The candidate's judgments demonstrate that she is independently minded.

12.2. By way of example, in *Nkala and Others v Harmony Gold Mining Company Limited and Others* (48226/12, 31324/12, 31326/12, 31327/12, 48226/12, 08108/13) [2016] ZAGPJHC 97; [2016] 3 All SA 233 (GJ); 2016 (7) BCLR 881 (GJ); 2016 (5) SA 240 (GJ) (13 May 2016), where the majority judgment was written by the deputy judge president and another judge who was her senior by a year, the candidate wrote a minority judgment which demonstrates her independent-mindedness.

**13. The candidate's administrative ability (other than in relation to court proceedings)**

13.1. The candidate is involved in professional bodies outside of her role as a judge, as a provincial co-ordinator and vice president of publications.

13.2. During her time as a judge the candidate has also served on the Education, Family Court, High Court Precinct and Lunch Club Committees.

13.3. This demonstrates that she has good administrative abilities.

**14. The message that the candidate's appointment would send to the public at large**

14.1. The candidate is a vastly experienced judicial officer whose experience is the type expected to be employed at the Supreme Court of Appeal. Her appointment would enhance the public view of the Supreme Court of Appeal bench as an experienced and trustworthy institution.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### Reported judgments:

1. *Moraitis Investments (Pty) Ltd and Others v Montie Diary (Pty) Ltd and Others* (799/2016) [2017] ZASCA 54; [2017] 3 All SA 485 (SCA); 2017 (5) SA 508; (SCA) (18 May 2017)
2. *Fluxmans Incorporated v Levenson* (523/2015) (2016) ZASCA 183; [2017] 1 All SA 313 (SCA); 2017 (2) SA 520 (SCA) (29 November 2016)
3. *Tembu Convenience Centre CC and Another v City of Johannesburg and Others* (270/2018) [2018] ZASCA 160; 20 I 9 (4) SA I 94 (SCA) (28 November 2018)
4. *Samons v Turnaround Management Association Southern Africa NPC and Another* 2019 (2) SA 596 (GJ)
5. *First National Nominees (Pty) Ltd v Capital Appreciation Limited Ltd* 2022 (6) SA 67 (SCA)
6. *DRD Gold Ltd v Nkala* 2023 (3) SA 461 (SCA)
7. *Vantage Goldfields SA (Pty) Ltd v Arqomanzi (Pty) Ltd* 2023 (4) SA 568 (SCA)
8. *Commissioner, South African Revenue Service v Airports Company South Africa* 2023 (2) SA 506 (SCA)
9. *Ntshongwana v State* [2024] 1 All SA 345 (SCA)
10. *Coral Lagoon Investments 194 (Pty) Ltd and Another v Capitec Bank Holdings Limited* [2023] 1 All SA 1 (SCA)

In all four reported Supreme Court of Appeal judgments authored by the candidate (7 to 10 above), the judgments were unanimous, save that in *Ntshongwana v State* [2024] 1 All SA 345 (SCA) Ponnar JA concurred that the appeal should be dismissed, however on narrower grounds.

### Unreported judgments:

11. *Various Parties obo Minors v Anglo-American South Africa Limited and Others* (2020/32777) [2023] ZAGPJHC 1474 (14 December 2023)
12. *ln2IT Tech (Pty) Ltd v Gijima Holdings (Pty) Ltd and others* [2023] JOL 59047 (GJ)
13. *Imbuko Wines (Pty) Ltd v Reference Audio CC* (405/2021) [2022] ZASCA 110 (15 July 2022)
14. *Anabella Resources CC v Genric Insurance Company Limited* (A5025/2019) [2020] ZAGP JHC 163 (2 July 2020)

15. *Deez Realtors v SA Securitisation Program* (175/2016) [2016] ZASCA 194 (2 December 2016)
16. *Meechan v Naude and Another* (A5003/2019) [2020] ZAGP JHC 272
17. *ABSA Bank Ltd v Innovent Rental and Asset Management Solutions (Pty) Ltd* (17212/2013) [2015] ZAGPJHC (9 February 2015)

Judgments upheld on appeal:

18. *Tembu Convenience Centre CC and Another v City of Johannesburg and Others* (270/2018) [2018] ZASCA 160; 20 I 9 (4) SA I 94 (SCA) (28 November 2018)
19. *First National Nominees (Pty) Ltd v Capital Appreciation Limited Ltd* 2022 (6) SA 67 (SCA)
20. *Deez Realtors v SA Securitisation Program* (175/2016) [2016] ZASCA 194 (2 December 2016)
21. *Meechan v Naude and Another* (A5003/2019) [2020] ZAGP JHC 272
22. *DRD Gold Ltd v Nkala* 2023 (3) SA 461 (SCA)
23. *Democratic Alliance v Minister of Co-Operative Governance* (700/2022) (2024) ZASCA 65 (30 April 2024)

Judgments overturned on appeal:

24. *Moraitis Investments (Pty) Ltd and Others v Montie Diary (Pty) Ltd and Others* (799/2016) [2017] ZASCA 54; [2017] 3 All SA 485 (SCA); 2017 (5) SA 508; (SCA) (18 May 2017)
25. *Fluxmans Incorporated v Levenson* (523/2015) (2016) ZASCA 183; [2017] 1 All SA 313 (SCA); 2017 (2) SA 520 (SCA) (29 November 2016)
26. *In2IT Tech (Pty) Ltd v Gijima Holdings (Pty) Ltd and others* [2023] JOL 59047 (GJ)
27. *Imbuko Wines (Pty) Ltd v Reference Audio CC* (405/2021) [2022] ZASCA 110 (15 July 2022)
28. *Anabella Resources CC v Genric Insurance Company Limited* (A5025/2019) [2020] ZAGP JHC 163 (2 July 2020)